

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :  
v. : Case No. 3:10-cr-39-KRG-KAP  
ROBERT L. HARRISON, : (Case No. 3:12-cv-123-KRG-KAP)  
Movant :  
:

Report and Recommendation

Recommendation

Robert Harrison filed a motion styled "Motion to Void Plea Agreement for Breach of Contract and Accept Motion Under 28 U.S.C. § 2255 & 3582." docket no. 146. It should be summarily denied without a certificate of appealability.

Report

Harrison seeks to vacate his sentence on the grounds that Assistant United States Attorney Valkovci (spelled Valcosi in movant's papers) violated a plea agreement that Harrison's criminal history would not be used to calculate his Guideline sentence range. The plea agreement signed by Harrison, at docket no. 148, does not contain any such condition. At the entry of his guilty plea on July 19, 2011, Harrison testified under oath that there were no other conditions than the ones set forth in the plea agreement. docket no. 147, July 19, 2011 Change of Plea Transcript at 9-10. Further, the plea agreement contains a provision, one that Harrison acknowledged under oath, that Harrison waived his right to take a direct appeal (except under two conditions: 1) a prior government appeal; and 2) a sentence unreasonably in excess of the Sentencing Guidelines range) and to file a motion to vacate.

docket no. 148, Plea Agreement at 3, ¶A.8; docket no. 147, July 19, 2011 Change of Plea Transcript at 13-14. The motion to vacate should be denied based on the waiver, but would fail on the merits as well.

Harrison references 18 U.S.C. § 3582 in the caption of his motion, but Harrison does not allege any favorable change in the Sentencing Guidelines, see §3582(c)(2), nor Rule 35 motion by the government, see §3582(c)(1)(B), nor motion by the Bureau of Prisons, see §3582(c)(1)(A), so that section is not relevant. Harrison's plea agreement does not restrict his right to file a motion under that section, so denial of this motion is without prejudice to filing a motion under Section 3582 if it ever becomes appropriate.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: July 12, 2012

  
Keith A. Pesto,  
United States Magistrate Judge

Notice to counsel of record by ECF and by U.S. Mail to:

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